Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	**WC Docket No. 11-59**
Expanding the Reach and Reducing the Cost	)	
of Broadband Deployment by Improving	)	
Policies Regarding Public Rights of Way and	)	
Wireless Facilities Siting	)	

COMMENTS OF THE CITY OF ARLINGTON, TEXAS

These Comments are filed by the City of Arlington, Texas in response to the Notice of Inquiry (hereafter "NOI"), released on April 7, 2011, in the above entitled proceeding. The City of Arlington Texas (hereafter "City") is a community of over 365,000 people in North Texas. The City associates itself with and adopts by reference the filing of the national organizations of local government (U.S. Conference of Mayors, International Municipal Lawyers Association et. al) and the filing of the Coalition of Texas Cities (Texas Municipal League, Texas Coalition of Cities for Utility Issues, Coalition of Texas Cities and the City of Houston, Texas). Through these comments, the City seeks to provide the Federal Communications Commission (hereafter "Commission) with the following information relative to specific fact patterns and rights-of-way rules for the City.

I. Municipalities at Forefront of Successful Broadband Deployment

Contrary to the underlying premise of the above referenced NOI, broadband deployment in municipalities across the nation and specifically Texas municipalities has been quite successful. In its report on the *Scope of Telecommunications Markets of Texas*, the Texas Public Utility Commission reported on the successful deployment of broadband in Texas:

> "[T]he number of broadband subscribers in Texas has grown from 614,704 in June 2001, to more than 7.4 million as of December 2008. In December 2008, Texas ranked second in the nation with respect to number of high-speed lines (including mobile broadband connections). Although customers have several options available to them, cable modem service and asymmetric digital subscriber line (ADSL) service, individually, continue to hold the largest shares of the wireline broadband market. . . . [C]ustomers in an increasing number of counties have multiple choices of providers when subscribing to broadband service. The number of broadband providers in Texas counties continues to increase. . . . According to the latest data, there are now no counties in Texas where broadband service is unavailable, and only 11 counties with only a single broadband provider."[1]

Municipalities are not a barrier to broadband deployment but rather have played a significant role in its successful deployment through efforts in past decades to require citywide build-out of cable systems. As noted above by the Texas Public Utility Commission, a primary means of providing broadband service in Texas is through cable modem service. While Texas municipalities no longer franchise the cable provider, the City of Arlington's previous cable franchise mandated the citywide build-out of the cable system. Further, the City's 1993 cable franchise required the cable provider to modernize and upgrade the cable system citywide with fiber within a reasonable timeframe. While the cable provider initially balked at the upgrade, the City made the franchise renewal contingent upon such upgrade. As a result of the City's cable build-out and system upgrade requirements, broadband service is available to all of the households and businesses within the City.

Such a citywide build-out requirement was not unique to Arlington but standard in municipal cable franchises nationwide. Is there any doubt that cable systems which are now providing broadband access would not have been built citywide absent such a requirement? One only has to look at AT&T's strenuous opposition to build-out requirements when the state-issued cable franchise legislation was being negotiated before the Texas legislature in 2005. Their

[1] PUBLIC UTILITY COMMISSION OF TEXAS REPORT TO THE 82ND TEXAS LEGISLATURE, SCOPE OF TELECOMMUNICATIONS MARKETS OF TEXAS, at 17 (Jan. 2011).

opposition was successful as the Texas cable franchise legislation provides that the "holder of a state-issued certificate of franchise authority shall not be required to comply with mandatory build-out provisions".[2] Clearly absent municipal build-out requirements, the industry would have cherry picked only those areas most lucrative for their bottom line and the current broadband system would not be in place.

II. Municipalities are Not a Barrier to Entry

The Commission's own data contradicts the underlying premise in the above referenced NOI that municipal rights-of-way management and compensation are barriers to broadband penetration. The Commission has found that areas unserved by broadband "appear to have lower income levels than the U.S. as a whole" and "appear to be more rural than the U.S. as a whole."[3] The Commission concluded that:

> "Based on our analysis, we conclude that broadband is not being deployed to all Americans in a reasonable and timely fashion. Our analysis shows that roughly 80 million American adults do not subscribe to broadband at home, and approximately 14 to 24 million Americans do not have access to broadband today. The latter group appears to be disproportionately lower-income Americans and Americans who live in rural areas."[4]

Similar to the above discussed cable provider's build-out reluctance, broadband providers continue to be adverse to construction of their broadband system in non-lucrative areas by generally excluding construction in lower income areas or rural areas altogether as evidenced by Commission data.

Indeed if municipal rights-of-way regulations were a barrier to entry, broadband penetration rates should obviously be higher in those areas where municipal rights-of-way

[2] Tex. Utilities Code § 66.007.
[3] FEDERAL COMMUNICATIONS COMMISSION SIXTH BRAODBAND DEPLOYMENT REPORT, at 16 (July 2010).
[4] FEDERAL COMMUNICATIONS COMMISSION SIXTH BRAODBAND DEPLOYMENT REPORT, at 19 (July 2010).

management regulations do not exist – in rural areas. However, the Commission's findings illustrate that the broadband deployment problem is in rural America outside of a city's limits. As such, what is the correlation between municipal rights-of-way management and low broadband penetration in those rural areas where such regulations do not exist?

The industry has created the subterfuge that but for municipal rights-of-way management and compensation, the nation would be blanketed with broadband. However, the lack of broadband deployment is not in urban America where such regulations exist but rather in rural America where it just simply is not as financially profitable for the industry to deploy and serve. Blaming municipalities for the failure of broadband deployment is a disturbing trend and quite simply a red herring to divert attention from the real problem - that if left to its own devices the industry will simply cherry pick those locations that are most lucrative for their bottom line profits. The Commission needs to refocus the spotlight off of municipalities and onto the industry while addressing the question as to what really is the national priority: (1) further increasing the undeniably large financial profits of the industry; or (2) the nationwide deployment of broadband?

III. Easy Access to Texas Rights-of-Way

Legislative enactments by the Texas legislature over the past decade have ensured that broadband providers in Texas have quick and easy access to municipal rights-of-way with an expedited franchising process at the state level. Texas municipalities no longer franchise the telephone provider (DSL provider)[5] or the cable television provider.[6] Both are the principal providers of broadband service in Texas as noted by the Texas Public Utility Commission:

> "Broadband service is principally being offered by local exchange carriers, cable companies and wireless companies. . . . The state-issued certificates of franchise

[5] Tex. Local Gov't Code § 283.001, et seq.
[6] Tex. Utilities Code § 66.001, et seq.

> authority have eased the entry of new participants (such as the ILECs) into the video market in Texas and the entry of existing cable companies into new markets. The ILECs have moved rapidly to compete in this new environment by offering television services in partnership with direct broadcast satellite operators, ***while investing in fiber optic network upgrades to offer Internet access*** and video programming on landline facilities. As of August 2010, 46 percent of the counties in Texas (116 counties) are or will be served by at least two video and cable providers. Smaller markets have also benefited from the entry of telecommunications companies into the video market. ILECs are increasing their presence in the video markets in Texas and are competing for customers with cable companies through "triple play" bundles of voice telecommunications service (local and long distance), ***broadband Internet***, and television programming at a fixed monthly rate."[7] (emphasis added).

Municipalities have historically been authorized through their police power to regulate the use of their rights-of-way and to be fairly compensated for such use. Congress recognized and retained the long held authority of municipalities to manage their rights-of-way through the Communications Act:

> "Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[8]

Similarly, the Texas legislature recognized and retained municipal authority to manage the public rights-of-way in the state telecommunications franchising statute:

> "It is also the policy of this state that municipalities . . . retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public."[9]

Likewise, the state cable franchising legislation retained municipal authority to manage the public rights-of-way.[10]

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[7] PUBLIC UTILITY COMMISSION OF TEXAS REPORT TO THE 82ND TEXAS LEGISLATURE, SCOPE OF TELECOMMUNICATIONS MARKETS OF TEXAS, at 1-2 (Jan. 2011).
[8] 47 USCS § 253(C).
[9] Tex. Local Gov't Code § 283.001(b)(1); Tex. Local Gov't Code § 283.056(c).
[10] Tex. Utilities Code § 66.011.

As such, both Congress and the Texas Legislature have recognized the importance of local control in municipal management and control of the public rights-of-way and other public property within the city as the trustee or guardian for its citizens. Use of the public streets and rights-of-way for the installation and repair of facilities is clearly secondary to the primary use of the public property. This use of public property by private providers disrupts traffic, creates public safety hazards, damages street surfaces, and significantly decreases the life expectancy of streets. Local control dictates that each municipality and their citizens individually review and address the community's needs relative to the use of their public rights-of-way and the protections afforded by a company using the public rights-of-way. Such local control is essential to protect the public health, safety and welfare of a municipality's citizens.

Since most municipal telephone and cable television franchises had previously contained rights-of-way management provisions, it was necessary for Texas municipalities to enact reasonable rights-of-way management regulations to fill the void once municipal franchises went away. The City's Right-of-Way Management ordinance was adopted in 2003 after many months of discussion with the affected utilities. Similar to many Texas municipalities, the City spent well over a year in negotiating and listening to the concerns of the affected industry in developing its' Right-of-Way Management ordinance as well as a Right-of-Way Permitting and Construction Manual. Both documents can be found on the City's webpage at the following links:

http://www.arlingtontx.gov/publicworks/pdf/row_permit_const_ordinance.pdf
http://www.arlingtontx.gov/publicworks/pdf/row_permit_const_manual.pdf.

As is the case with other municipalities, the City's Right-of-Way Management ordinance addresses the unique environment, topography, health, safety and welfare concerns of a North Texas municipality while also taking into account industry concerns. These are highly fact-

specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. On the other hand, many entities seeking access to the public rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer. Clearly the industry would prefer a "one size fits all" rights-of-way management scheme designed in Washington D.C. that provides them carte blanche to place facilities within public property in whatever manner they choose with no oversight or accountability.

However, while the industry may prefer to operate in the public rights-of-way with such impunity at the expense of the health, safety and welfare of the citizenry, there is nothing in the Commission's data that supports the notion that such unhindered access to the public rights-of-way will further the deployment of broadband. To the contrary, the Commission's data shows that the broadband deployment problem is in rural areas where such rights-of-way management regulations do not exist.

Finally, Texas is the only state in the union to have previously been an independent nation prior to its annexation into the United States of America. A condition of the annexation was that Texas would retain its' public lands upon annexation.[11] The State of Texas in turn delegated to home-rule municipalities "exclusive control over and under the public highways, streets, and alleys of the municipality".[12] Therefore, public rights-of-way in Texas is not federal land subject to regulation by the Commission.

In short, decisions made relative to the management of the public rights-of-way should be made locally by the individual municipalities who have demonstrated the unique expertise and

[11] *Joint Resolution for annexing Texas to the United States*, adopted March 1, 1845, by the 28th Congress, Second Session, 5 U.S. Stat. 797.
[12] Tex. Transp. Code § 311.001.

knowledge relative to such management rather than a federal agency thousands of miles away in Washington D.C. with no local knowledge, expertise or accountability to the local citizenry.

IV. City's Public Right-of-Way Construction Permit Application

The City's Right-of-Way Management ordinance requires that a construction permit be obtained prior to performing any construction in the public rights-of-way.[13] Again, the City's Right-of-Way Management ordinance as well as Right-of-Way Permitting and Construction Manual can be found on the City's webpage. The applicant must complete a one page permit application and provide a copy of their construction plans to the City's Department of Public Works.[14] In cases where stream crossings are proposed to be open cut, the applicant must submit a storm water pollution prevention plan.[15] Any work that may impact traffic flow or result in lane closures in any street will also require an approved site specific traffic control plan.[16] The City does not charge a permit fee for a public rights-of-way construction permit.

While an applicant may submit a public rights-of-way construction permit application at any time, the City also holds a weekly plan review meeting for applicants every Wednesday to review rights-of-way construction permit applications. Often times, permits for minor projects can be issued on the spot when the application and construction plans are complete. Otherwise, completed permit applications for a minor project are typically issued within five business days. A minor project is defined as:

- Projects less than 2000 feet in length; and
- Projects that contain 2 or less street or creek crossings; and
- Projects that will take 14 consecutive days or less to complete; and
- Projects that include only local repairs.[17]

[13] Section 5.01, Right-of-Way Management Chapter, Code of the City of Arlington, Texas.
[14] Section 5.04, Right-of-Way Management Chapter, Code of the City of Arlington, Texas.
[15] Section 5.04(C), Right-of-Way Management Chapter, Code of the City of Arlington, Texas.
[16] Section 5.04(D), Right-of-Way Management Chapter, Code of the City of Arlington, Texas.
[17] Section 3.1, City of Arlington Public Right-of-Way Permitting and Construction Manual.

The most common cause for delay are incomplete application and construction plans or projects that conflict with existing city facilities.

The timeframe for permit issuance for a major project varies depending upon the complexity of the project. However, a typical major project is generally approved within two to three weeks once a completed application and construction plan have been provided. A major project is defined as:

- Projects greater than 2000 feet in length; or
- Projects involving more than 2 street or creek crossings; or
- Projects involving street closures; or
- Projects within any roadway which will be widened in the future as listed in the City's Thoroughfare Development Plan; or
- Projects that will take more than 14 consecutive working days to construct.[18]

The City's rights-of-way management regulations have been very successful in meeting the dual goals of protecting the integrity of the public rights-of-way while also providing applicants timely access for placement of their facilities within the public rights-of-way.

V. Sources of Delays

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications. In the City of Arlington, most applications are processed promptly as set forth above. However, **when delays occur it is most often a result of the applicant providing incomplete information or construction plans to the City**.

VI. Applications in Light of Shot Clock Ruling

The Commission seeks comment on the application of the Shot Clock Ruling, and its efficacy in reducing delays in the local zoning process. Once again, the NOI starts with the underlying faulty premise that unreasonable delays exist with the processing of collocation and

[18] Section 3.1, City of Arlington Public Right-of-Way Permitting and Construction Manual.

wireless tower siting requests. Further, the City restates its' position that the Commission was without authority to set the arbitrary deadlines in the Shot Clock Ruling as set forth below:

1. Historical Role of Zoning. While cellular towers are clearly a necessary part of the nation's communications network, zoning regulations are just as necessary to ensure that the tower locations are compatible with the surrounding uses and neighborhood. Zoning is uniquely a matter of local control reflecting the collective will of each individual community in enacting reasonable land use and zoning regulations to protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of each individualized community.[19] Most municipalities, including Arlington, have promulgated regulations to ensure that invasive cellular towers are compatible with the surrounding uses and neighborhoods. Each tower application has to be reviewed on its own individual merits. Complex or contentious applications by their very nature may require more review, engineering studies or surveys that could very possibly take longer than the Commission's deadlines. However, the Commission's Ruling disregards the complexity of cellular telephone tower placements with the arbitrary deadlines.

2. Disregards Congressional Intent. The Commission's Shot Clock Ruling seeks to provide preferential treatment for collocation and wireless tower siting applications contrary to Congressional intent. Section 332(c)(7) is titled "Preservation of Local Zoning Authority" and clearly states that:

> "Except as provided in this paragraph, nothing, in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities."[20]

[19] Euclid v. Ambler Realty Co., 272 U.S. 365 (U.S. 1926).
[20] 47 U.S.C. § 332(c)(7)(A).

The legislative history for Section 332(c)(7) illustrates Congressional intent that the time for municipalities to act on wireless telephone applications is the generally applicable time frames for other zoning decisions "taking into account the nature and scope of each request" without giving "preferential treatment" to the personal wireless service industry:

> "Under subsection (c)(7)(B)(ii), decisions are to be rendered in a reasonable period of time, taking into account the nature and scope of each request. If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances. ***It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision***."[21] (emphasis added.)

Further, the legislative history clearly states that Section 332(c)(7) "prevents the Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth in the conference agreement".[22] Section 332(c)(7)'s legislative history clearly states the Congressional intent that the "reasonable time" requirement for action on a tower request application is to be the same generally applicable time frames for other zoning decisions with no preferential treatment for tower cases. The Commission's timeframes are clearly contrary to Section 332(c)(7) as expressed by the clear reading of the statute as well as the clear expression of Congressional intent as expressed above. Indeed, the Commission's Shot Clock Ruling provides for preferential treatment in the processing of these zoning requests through the arbitrary processing deadlines while all other zoning applications are required to go through the statutory process with no such preferential treatment.

(3) City's Ordinance, Application and Outcomes. In the mid-1990's, a task force was organized consisting of industry and municipal stakeholders to develop a model wireless antenna

[21] H.R. Conf. Rep. No. 104-458, at 208-209.
[22] H.R. Conf. Rep. No. 104-458, at 208-209.

siting ordinance. This task force met over the course of several months to develop a model ordinance which was then distributed as a model ordinance to member cities of the Texas Coalition of Cities for Utility Issues. The model ordinance among other things encouraged collocation. Based upon the model ordinance, the Arlington City Council amended the Arlington Zoning Ordinance in 1998 to add provisions relative to wireless telecommunications facilities.[23] While collocation and wireless tower siting applications are promptly processed as are other zoning applications, there are clearly occasions where more time will be required due to incomplete applications, complexity etc.

VII. Improvements in Processing

The Commission asks whether there are particular practices that can improve processing. The City of Arlington has recognized a number of practices that have improved the process. As referenced above, applicants have ready access to the City's Right-of-Way Management ordinance as well as Right-of-Way Permitting and Construction Manual on the City's webpage at:

http://www.arlingtontx.gov/publicworks/pdf/row_permit_const_ordinance.pdf
http://www.arlingtontx.gov/publicworks/pdf/row_permit_const_manual.pdf.

In addition, City staff makes a concerted effort to work with applicants in the prompt processing of public right-of-way construction permit applications. While the applicant can submit their public rights-of-way construction permit application at any time, City staff conducts a weekly scheduled meeting to review and discuss permit applications with applicants. Often times, permits for completed applications can be approved on the spot at these meetings.

[23] Section 12-800, Wireless Telecommunications Facilities, Zoning Chapter of the Code of the City of Arlington, Texas.

VIII. Permitting Charges & Compensation

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." First of all, the City does not charge a permit fee for a public right-of-way construction permit. The Texas Legislature has enacted state franchising for both cable television providers[24] and certificated telecommunication providers.[25] While both franchising statutes allow Texas municipalities to require a construction permit for rights-of-way access, such permits are to be without cost to the applicant.[26] As such, the City does not have a permit fee for any provider seeking a public right-of-way construction permit.

Secondly, through these state franchising statutes, the Texas legislature also recognized the Constitutional obligation for Texas municipalities to receive compensation as rental fees for use of the public rights-of-way.[27] The Texas Constitution provides that a municipality is prohibited from granting any "public money or thing of value in aid of, or to any individual, association or corporation whatsoever".[28] Publicly owned street rights-of-way is clearly a thing of value under which Texas municipalities are Constitutionally mandated to obtain fair market value for its use. The Texas Supreme Court has recognized this constitutional limitation:

> "No feature of the Constitution is more marked than its vigilance for the protection of the public funds and the public credit against misuse."[29]

[24] Tex. Utilities Code § 66.001, et seq.
[25] Tex. Local Gov't Code § 283.001, et seq.
[26] Tex. Local Gov't Code § 283.056; Tex. Utilities Code § 66.011.
[27] Tex. Utilities Code § 66.005; Tex. Local Gov't Code § 283.055.
[28] Tex. Const. Art. III, § 52.
[29] Bexar County v. Linden, 110 Tex. 339 (Tex. 1920).

Further, it has been settled law by the United States Supreme Court for well over a hundred years that municipalities have the right to receive compensation from those using the public rights-of-way as rental for such use:

> "Now, when there is this permanent and exclusive appropriation of a part of the highway, is there in the nature of things anything to inhibit the public from exacting rental for the space thus occupied? Obviously not. Suppose a municipality permits one to occupy space in a public park, for the erection of a booth in which to sell fruit and other articles; who would question the right of the city to charge for the use of the ground thus occupied, or call such charge a tax, or anything else except rental? So, in like manner, while permission to a telegraph company to occupy the streets is not technically a lease, and does not in terms create the relation of landlord and tenant, yet it is the giving of the exclusive use of real estate, for which the giver has a right to exact compensation, which is in the nature of rental."[30]

Contrary to the law of the land, the industry seeks to tie municipal compensation to a city's cost of maintaining and regulating their rights-of-way while completely disregarding the rental value of the rights-of-way. However, neither Congress nor the Supreme Court has done anything to restrict the Court's determination that municipalities are entitled to fair market rent for the use of their public rights-of-way. In fact, Congress reemphasized such right through the Communications Act:

> "Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to ***require fair and reasonable compensation*** from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[31] (emphasis added.)

Clearly, had Congress intended the words "fair and reasonable compensation" to overturn prior common law by now limiting local governments to recovering their costs, such would have been clearly stated. Indeed, the United States Supreme Court has made clear that the repeal of prior common law by a statute does not occur "unless the language of a statute be clear and

[30] St. Louis v. Western Union Tel. Co., 148 U.S. 92, 99 (U.S. 1893).
[31] 47 USCS § 253(C)..

explicit for this purpose".[32] Clearly, Congress' use of the words "fair and reasonable compensation" in the Communications Act is not a "clear and explicit" repeal of the Supreme Court's determination that municipalities are entitled to fair market rental for use of their public rights-of-way. To the contrary, Congress use of "fair and reasonable compensation" further supports the Court's determination that municipalities are entitled to fair market rental for use of their public rights-of-way. Any attempt by the Commission to limit municipal compensation to cost would be both contrary to the law of the land as well as an unauthorized subsidy to national and international corporations of rent-free use of public land at the expense of the taxpayers.

IX. Local Policy Objectives

The Commission asks what "policy goals and other objectives" underlie the local practices and charges in this area. The City's policies are designed to achieve the following:

- To facilitate the responsible deployment of services by public service providers;
- To make the services broadly available to the City's citizens;
- To protect the health, safety, and welfare of the public during the installation, operation, and maintenance of facilities by public service providers;
- To govern and monitor the orderly use of the public rights-of-way in order to avoid traffic disruption and to prevent public disruption and damage to abutting property;
- To provide for the registration of public service providers with facilities in the public rights-of-way so the City knows who has facilities within its public rights-of-way;
- To provide insurance requirements for construction in the public rights-of-way;
- To provide permit requirements and procedures for construction in the public rights-of-way;
- To provide for maintenance and repair of the public rights-of-way and of facilities located in the public rights-of-way in order to minimize accelerated deterioration to City streets that accompanies street cuts;
- To provide for emergency activities by public service providers in the public rights-of-way;
- To provide for coordination with public improvements; and
- To obtain fair rental compensation for use of public property.

[32] Norfolk Redevelopment and Housing Authority v. Chesapeake and Potomac Telephone Company of Virginia, 464 U.S. 30 (1984).

The City's policies have helped to avoid problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for the public service providers who follow the rules while also protecting the health, safety and welfare of the local community.

X. Possible Commission Actions

Finally, the Commission asks what actions the Commission might take in this area. As noted above, the City strongly urges the Commission to refrain from regulating local rights-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way would have significant impacts on the City and may actually make it difficult to continue to maintain or provide important public services such as free Internet service in City libraries.

If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

The City has developed considerable expertise in developing and applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. A basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission's

limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

The City has successfully managed its property to encourage deployment of several broadband networks. As a result, broadband service is available to all of the households and businesses within the City. There is no evidence that the City's policies or compensation with respect to placement of facilities in the rights-of-way or on City property have discouraged broadband deployment. The City welcomes broadband deployment and works with any company willing to provide service. No company has cited the City's policies as a reason that it will not provide service.

XI. CONCLUSION

The City urges the Commission to conclude that rights-of-way and facility management and compensation are not impeding broadband deployment. As indicated above, the City's policies and procedures are designed to protect important local interests and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service in the City and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

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July 14, 2011

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